

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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INDIAN HARBOR INSURANCE COMPANY,

Plaintiff,

-against-

THE CITY OF SAN DIEGO,

Defendant.

CALIFORNIA STATE ASSOCIATION OF  
COUNTIES EXCESS INSURANCE AUTHORITY  
and INSURANCE COMPANY OF THE STATE OF  
PENNSYLVANIA,

Defendant-Intervenors.  
-----X

No. 12 Civ. 5787 (JGK)

**DEFENDANT-INTERVENOR'S RESPONSE TO PLAINTIFF'S STATEMENT OF  
ADDITIONAL MATERIAL FACTS**

Pursuant to Local Rule 56.1, defendant-intervenor California State Association of Counties Excess Insurance Authority ("CSAC-EIA") submits the following Response to Plaintiff's "Additional Material Facts" (Dkt. No. 88 ¶¶ 66-70).

66. All activities specifically related to the Indian Harbor policy (the underwriting, the assembly of the insured's information with policy forms bearing the required signatures, the printing of the assembled policy, and the sending out of the policy) occurred in Exton, Pennsylvania.

**CSAC-EIA Response:** Disputed. CSAC-EIA disputes Plaintiff's statement that "[a]ll activities specifically related to the Indian Harbor policy" occurred in Exton, Pennsylvania. Plaintiff does not dispute that the Policy (both on the "Declarations" page and the "In Witness Endorsement") contains the signature of former Indian Harbor President, Dennis Kane, and

identifies Mr. Kane as Indian Harbor's "Authorized Representative." (Dkt. No. 88 ¶¶ 55-58) Plaintiff also does not dispute that at the time the Policy was issued, Mr. Kane was located in Indian Harbor's New York office. (*Id.* ¶ 59) Plaintiff's designee, Mr. McMahon, testified that he did not know whether or not Mr. Kane went to Exton, Pennsylvania to sign the Policy. (Stern Decl. Ex. 1 (Dkt. No. 87-1) (McMahon Depo. Tr. at 20:20-21:3))

67. The signatures that appear on the Indian Harbor were pre-existing electronic signatures stored in a computer system that were automatically placed on two forms ("Declarations" and "In Witness Endorsement") when the policy was assembled and printed in Exton, Pennsylvania.

**CSAC-EIA Response:** Undisputed, except CSAC-EIA states that neither the cited testimony, nor any other record evidence, has established the originating source or nature of the authority any Exton, Pennsylvania-based employees of XL Specialty Insurance Company might have had to affix Indian Harbor President, Mr. Kane's, facsimile signature to the Policy. Nor can the Court determine, based on the present record, what importance Mr. Kane or Indian Harbor placed on Mr. Kane's signature through its internal policies and operating procedures. These are disputed issues of material fact concerning the issuance of the Policy.

68. All the individuals involved in creating this specific Indian Harbor policy were acting on behalf of Indian Harbor.

**CSAC-EIA Response:** Disputed. Plaintiff's supporting evidence (Stern Decl. Ex. 1 (Dkt. No. 87-1) (McMahon Depo. Tr. at 11:19-24, 12:8-13, 97:13-98:2)) does not establish that "[a]ll the individuals involved in creating this specific Indian Harbor policy were acting on behalf of Indian Harbor." Plaintiff merely states that the underwriting and physical preparation

of the Policy was performed by employees of XL Specialty Insurance Company, a company separate from Indian Harbor. (Dkt. No. 88 ¶ 61)

69. The cover letter to the insured providing a copy of the Indian Harbor policy was on Exton, Pennsylvania letterhead.

**CSAC-EIA Response:** Undisputed, except CSAC-EIA states that the letter referenced in the cited testimony (Stern Decl. Ex. 1 (Dkt. No. 87-1) (McMahon Depo. Tr. at 73:6-8)) was sent from Greg Leinweber, an employee of XL Insurance, and was sent on XL Insurance letterhead.

70. Toni Ann Perkins's office was located in Connecticut.

**CSAC-EIA Response:** Undisputed.

Dated: September 3, 2013

Respectfully submitted,

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